



DEPARTMENT OF VETERANS AFFAIRS

8320-01

38 CFR Part 17

RIN 2900-AO51

Removal of Penalty for Breaking Appointments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to remove a regulation that states that a veteran who misses two medical appointments without providing 24 hours' notice and a reasonable excuse is deemed to have refused VA medical care. The current regulation states that no further treatment will be furnished to a veteran deemed to have refused care except in emergency situations, unless the veteran agrees to cooperate by keeping future appointments. VA believes that the current regulation is incompatible with regulatory changes implemented after the regulation was promulgated, is not in line with current practice, and is inconsistent with VA's patient-centered approach to medical care.

DATES: Comments must be received by VA on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1068, Washington, DC 20420; or by fax

to (202) 273-9026. Comments should indicate that they are submitted in response to “RIN 2900-AO51- Removal of Penalty for Breaking Appointments.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. This is not a toll-free number. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

FOR FURTHER INFORMATION CONTACT: Ethan Kalett, Director, Office of Regulatory Affairs (10B4), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420; (202) 461-5657. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Over the past two decades, there has been a dramatic shift in the United States toward providing patient-centered medical care. Under this approach, patients are equal partners in making treatment decisions, and health care providers deliver care in the least restrictive environment practicable. VA has adopted this approach and, whenever possible, eliminates both potential and proven barriers to care. This is especially important in cases where VA provides treatment to vulnerable veteran populations, veterans who rely on VA as their primary source of medical care, and those with service-connected disabilities. This rulemaking will eliminate a potential barrier to care by removing 38 CFR 17.100.

Under the current regulation, breaking two medical appointments without providing at least 24 hours' notice and a reasonable excuse is deemed a refusal to accept VA treatment. With the exception of emergency care, no further treatment is furnished until the veteran agrees to cooperate by keeping appointments.

We propose to remove this regulation because denying follow up medical treatment for even a short period can interfere with continuity and coordination of care, and the punitive nature of the regulation could have a negative impact on the therapeutic relationship. In addition, VA has taken steps to encourage certain veterans to use our health services, including homeless veterans and other veterans who may not have readily available support such as reliable telephone access or dependable transportation to and from scheduled appointments. VA believes that refusing to provide further medical services to those patients because of broken appointments is counterproductive and may discourage them from attempting to access care in the future. Further, while the current regulation allows VA to provide treatment for an emergent condition, we do not believe this provides an adequate safety net for our patients, especially those with chronic or poorly controlled medical conditions.

Finally, it is not the current practice of VA to deny care to an eligible enrolled veteran who breaks a scheduled appointment. VA's outpatient appointment scheduling processes and procedures do not include documenting the reason given for a missed appointment. Thus, the proposed change will bring regulations in line with current practice.

In a note to 38 CFR 17.107 we state, "Although VA may restrict the time, place, and/or manner of care under this section, VA will continue to offer the full range of

needed medical care to which a patient is eligible under title 38 of the United States Code or Code of Federal Regulations. Patients have the right to accept or refuse treatments or procedures, and such refusal by a patient is not a basis for restricting the provision of care under this section.” Section 17.107 sets forth procedures for addressing disruptive behavior of patients by imposing reasonable restrictions on the care for which they are eligible. The regulation we intend to remove deems breaking an appointment without 24 hours’ notice and a reasonable excuse to be a refusal to accept VA treatment, and denies access to further care based on that refusal. We believe this is contrary to VA’s mission and core values, and to § 17.107.

#### Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

#### Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3521).

### Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. This proposed rule would directly affect only individuals and would not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

### Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB) as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary

impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866.

#### Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; and 64.022, Veterans Home Based Primary Care.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on March 25, 2013, for publication.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Government programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Dated: April 10, 2013

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Robert C. McFetridge,  
Director of Regulation Policy and Management,  
Office of General Counsel,  
Department of Veterans Affairs.



For the reasons stated in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 17 as follows:

#### PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

2. Remove § 17.100 and the undesignated center heading that precedes it.

[FR Doc. 2013-08794 Filed 04/12/2013 at 8:45 am; Publication Date: 04/15/2013]